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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO. 145 OF 2007

APPLICANT Shyam Kunwar Bai

Vs.

RESPONDENT State of Chhattisgarh

ORDER

Post for 7-8-2007

Sd/-
Dhirendra Mishra
Judge

(19)

SB : HON'BLE SHRI DHIRENDRA MISHRA, J.

CR.M.P. NO. 145 OF 2007

APPLICANT — Shyam Kunwar Bai W/o. Anuk Singh, Aged about 45 years, Caste-Gonde, R/o. Village-Madanpur, Injko, Thana & Tehsil-Pathalgaon, Distt. Jashpur (CG)

Vs.

RESPONDENT — State of Chhattisgarh, Through Station House Officer, P.S. Pathalgaon, Distt. Jashpur (CG)

ORDER
(7.08.07)

Present:

Miss. Sharmila Singhai, counsel for the applicant.

Mr. G.K. Beriwal, Dy. A.G. for the State.

Heard.

The applicant has filed this petition under Section 482 of the Cr.P.C. against the impugned order dated 26.2.2007 passed by learned Additional Sessions Judge, Jashpur in Criminal Revision No.02/2007 whereby the Criminal Revision of applicant against the order dated 15.01.2007 passed by Judicial Magistrate First Class, Patthalgaon in Criminal Case No. 14/2007 has been rejected.

Brief facts of the case are that the applicant was arrested in connection with offence under Section 397 of the IPC on 17.10.2006 and thereafter, she was remanded by the learned Magistrate to judicial custody on 18.10.2006. An application under Section 167(2) of the Cr.P.C. was filed by the applicant before the Magistrate for her release from jail on the ground that the prosecution has failed to file the charge sheet within the statutory period of 90 days, however the same was rejected by the learned Magistrate vide order of Annexure A-2. Against the said order a revision was preferred by the applicant, which was also dismissed by the impugned order with a finding that since the accused was remanded on 18.10.2006 the period of limitation for the purpose of Section 167(2) of the Code would

commence from 19.10.2006 and therefore, the charge sheet filed on 16.01.2007 was within the prescribed period of limitation of 90 days.

Learned counsel for the applicant submitted that the revisional Court has committed illegality in computing the period of detention, as the period of limitation commences from the date on which the Judicial Magistrate remands the accused to judicial custody.

In the instant case if the computation is made from the date of remand, in that case the charge sheet was admittedly filed on 16th of January 2007 i.e. on the 91st day and in the circumstances it cannot be held that the charge sheet filed by the prosecution on 16.01.2007 was within 90 days, as provided under Section 167 (2) of the Cr.P.C.

Reliance is placed upon the judgment in the matter of ***State of Maharastra Vs. Mrs. Bharati Chandmal Varma @ Ayesha Khan (2002 Criminal Law Journal 575 SC)***.

On the other hand learned counsel for the respondent/State has supported the impugned order.

In the matter of Mrs. Bharti Chandmal Verma @ Ayesha Khan (supra) the Hon'ble Supreme Court has held in para 12 that the respondent accused is entitled for bail on account of the default of the investigating agency to complete the investigation within 90 days from the date of the first remand of the respondent.

In the light of the above binding judgment of the Apex Court, the impugned orders passed by both the Courts below cannot be sustained. The accused was remanded in judicial custody on 18.10.2006 and the charge sheet has been filed on 16.01.2007 i.e. on 91st day.

In the result the petition succeeds. The order dated 26.02.2007 passed by learned Additional Sessions Judge, Jashpur, District Jashpur as also the order dated 15.01.2007 passed by learned Judicial Magistrate First Class, Pathalgaon in Criminal Case No. 14/2007 are set aside. The application under

proviso to sub-section (2) of Section 167 of the Code dated 15.01.2007 is allowed and it is directed that on applicant's furnishing a personal bond for a sum of Rs. 20,000/- with two solvent sureties of the like amount to the satisfaction of the trial Court concerned, she be released on bail.

Sd/-
Dhirendra Mishra
Judge